



978396

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

- - -

UNITED STATES OF AMERICA : CIVIL ACTION
vs. :
CONSOLIDATED RAIL :
CORPORATION, a/k/a CONRAIL, :
et al. : NO. 590-00056

- - -

February 17, 1993
Philadelphia, Pennsylvania

- - -

Pretrial examination of HOWARD R. ELLIOTT,
taken in the offices of The United States
Attorney, 615 Chestnut Street, 12th Floor, on the
above date, commencing at 11:05 a.m., before
Janice M. Leaman, a Notary Public and Approved
Reporter of the United States District Court for
the Eastern District of Pennsylvania.

- - -

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APPEARANCES:

UNITED STATES DEPARTMENT OF JUSTICE
BY: PETER H. RUVOLO, ESQUIRE
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BLANK, ROME, COMISKY & MCCAULEY
BY: PATRICK MCDONNELL, ESQUIRE
Four Penn Center Plaza
Philadelphia, Pennsylvania 19103
Attorney for Penn Central Corporation

1 H. Elliott

2 (It is hereby stipulated and
3 agreed by and among counsel that sealing,
4 certification and filing of the within
5 deposition are hereby waived; that all
6 objections except as to the form of the
7 question are reserved until the time of
8 trial.)

9 HOWARD R. ELLIOTT, having been
10 first duly sworn, was examined and
11 testified as follows:

12 BY MR. RUVOLO:

13 Q. I would just like to put this on
14 the record, at the request of Mr.
15 Cunningham and his firm, we discussed
16 this deposition sometime early last week.
17 Mr. Cunningham advised that he would not
18 be able to attend, that someone from his
19 office would attend. There was no request
20 that the deposition be adjourned or put
21 off, and I received a call yesterday
22 morning from a Mr. Hoy, I believe his
23 name is, Steven Hoy, I am not sure of the
24 spelling, I think it's H-O-Y, but I am
25 not positive, who advised that since Mr.

1 H. Elliott

2 Cunningham is out of state and Mr. Nadler
3 of their office is on trial in Detroit,
4 and that he is home sick in bed with the
5 flu, and that the associates located out
6 in the office in Indiana were snowed in
7 with ten inches of snow, that nobody
8 would appear today. They would like to
9 put on the record officially that they
10 reserve the right to recall this witness
11 should they feel it necessary at a later
12 date. I have no objection to that. Maybe
13 Mr. Ermilio might?

14 MR. ERMILIO: I understand they
15 didn't call the witness for this
16 deposition to begin with?

17 MR. RUVOLO: No. Right.

18 MR. ERMILIO: We reserve our
19 rights certainly in the event that they
20 request this deposition, we will address
21 the issue at that time.

22 BY MR. RUVOLO:

23 Q. Fine. Mr. Elliott, would you give
24 us your address, please?

25 A. (b) (6)

1 (b) (6)
2

3 Q. And a telephone number at which
4 you could be reached?

5 A. (b) (6)

6 Q. My name is Peter Ruvolo. I am an
7 attorney with the justice department, and
8 we represent the Environmental Protection
9 Agency in this proceeding. This is a
10 civil proceeding, as you may know,
11 seeking to recover our costs, expenses,
12 due to ground water contamination in and
13 around the Elkhart railroad yard on the
14 Robert Young Railroad facility.

15 If at any time you have any
16 questions or you don't understand my
17 question, please don't hesitate to ask,
18 if you want me to clarify it or repeat it
19 or something to that effect. If you need
20 a break at any time, just say so, and we
21 can take a short break.

22 (Whereupon, Mr. McDonnell
23 entered the deposition.)

24 MR. McDONNELL: My name is Pat
25 McDonnell. I am here on behalf of Penn

1 H. Elliott

2 Central Corporation. I am just here
3 essentially to reserve the rights of Penn
4 Central to redepose this witness if it's
5 deemed necessary. I would also like the
6 record to reflect that we were just
7 noticed this deposition on Friday, and
8 that the regular attorneys that are
9 assigned to this case both have
10 commitments elsewhere.

11 MR. RUVOLO: When you say you
12 just received notice of this on Friday,
13 you mean your office?

14 MR. McDONNELL: I am sorry, my
15 office just received notice on Friday. In
16 fact, my office received notice on
17 Tuesday. Peter Hoy, I am sorry, Steven
18 Hoy, received notice on Friday. Steven is
19 ill right now. That's why he's not here.

20 MR. ERMILIO: Off the record.

21 (Whereupon, an off-the-record
22 discussion was held.)

23 BY MR. RUVOLO:

24 Q. As I said, if you need a break,
25 just raise your hand, just say so, and we

1 H. Elliott

2 will take a break. From time to time
3 there may be objections raised to some of
4 the questions asked. Unless your attorney
5 directs you not to answer, you will still
6 answer after the objection has been
7 made; is that clear?

8 A. That's clear.

9 Q. Okay. Can you tell us a little
10 bit about yourself, where you went to
11 school, when you went to school, where
12 you grew up?

13 A. I was born and raised in Elkhart,
14 Indiana. (b) (6)

15 I attended school in the Elkhart School
16 System. I attended and graduated then
17 from Indiana University.

18 Q. And what was your major at
19 Indiana University?

20 A. I had a bachelor of arts degree.
21 I had a double major in forensic science,
22 in English.

23 Q. And did there come a time that
24 you came to work for the railroad and
25 began your work with the railroad?

1 H. Elliott

2 A. Yes.

3 Q. Which railroad was that, and what
4 date was that?

5 A. Conrail, August 1977.

6 Q. So, you never worked for Penn
7 Central Corporation?

8 A. No.

9 Q. And what was your first function
10 at Conrail?

11 A. I was a police officer with the
12 Conrail Police Department.

13 Q. And after that?

14 A. Subsequent to my job as a police
15 officer I then became a division safety
16 supervisor. That was followed by a job as
17 regional safety superintendent, which was
18 followed by a job as supervisor of
19 hazardous materials, which was followed
20 currently as area environmental engineer,
21 or excuse me, area environmental manager.
22 Q. Could you give us a breakdown of
23 the dates that you became, first of all,
24 divisional safety officer and then
25 regional?

1 H. Elliott

2 A. I was employed as division safety
3 supervisor from it would be July of 1985
4 to -- excuse me, July 1984 to October of
5 1985. I was employed as regional safety
6 superintendent from October 1985 to
7 October 1988.

8 Q. And as supervisor of the
9 hazardous materials section?

10 A. I was supervisor of hazardous
11 materials from October of 1988 until June
12 of 1992.

13 Q. And between the time that you
14 hired on as a police officer back in, I
15 believe you said, '77 until '84, what
16 were your job functions?

17 A. General law enforcement-related
18 duties, also heavily related to
19 protection of Conrail property at both
20 the Elkhart yard and in a territory that
21 basically extended east and west from
22 Elkhart.

23 Q. How long did you stay out at the
24 Elkhart yard or work out at the Elkhart
25 yard, and for what period of time?

1 H. Elliott

2 A. The office that I worked out of
3 from 1977 until 1984 was headquartered in
4 Elkhart.

5 Q. In '84 and '85, were you still in
6 Elkhart or did you move to someplace else
7 as division safety supervisor?

8 A. As division safety supervisor I
9 had an office at our division
10 headquarters in Chicago.

11 Q. And did that office have
12 jurisdiction over the Elkhart yard?

13 A. Yes.

14 Q. And as regional supervisor, '85
15 to '88, where were you located?

16 A. As regional safety superintendent
17 from '85 to '88 here in Philadelphia.

18 Q. And did that have jurisdiction
19 over the Elkhart yard?

20 A. No.

21 Q. And as your current position of
22 supervisor of hazardous material, do you
23 have jurisdiction over --

24 A. That's not my current position.

25 Q. What's your current position?

1 H. Elliott

2 A. Area environmental manager.

3 Q. And that's in Philadelphia?

4 A. Mount Laurel, New Jersey.

5 Q. And what is your jurisdiction in

6 that, just is there a particular region

7 that you are in charge of?

8 A. East of Harrisburg.

9 Q. And from '88 to '92, what was

10 your jurisdiction and where were you

11 stationed?

12 A. I was stationed in our corporate

13 headquarters in Philadelphia, and

14 responsible for the entire Conrail

15 system.

16 Q. And did you know a person by the

17 name of MC or Michael C. Mitchell?

18 A. Yes.

19 Q. When did you first meet Mr.

20 Mitchell and what was your relationship

21 with Mr. Mitchell?

22 A. I first met Mr. Mitchell when I

23 was division safety supervisor in

24 Chicago. I subsequently went to work for

25 Mr. Mitchell, who was director of safety,

1 H. Elliott

2 when I became regional safety
3 superintendent in 1985.

4 Q. For the period 1984, '85, while
5 you were in Chicago, did you have a
6 support staff or people that reported to
7 you?

8 A. No direct support staff. There
9 was one clerical employee who did not
10 work for me.

11 Q. And how about when you came to
12 Philadelphia, how large a reporting staff
13 did you have?

14 A. Initially, there was no reporting
15 staff. Towards the end of the time frame
16 and due to a reorganization in the safety
17 department I at one point had five
18 division safety supervisors who reported
19 to me.

20 Q. Was there one from -- that
21 covered the Elkhart yard?

22 A. No.

23 Q. And as supervisor of hazardous
24 materials, how large a staff did you
25 have?

1 H. Elliott

2 A. I had no one reporting to me.

3 Q. And who did you report to, if
4 anybody?

5 A. James McNally.

6 Q. And as the area environmental
7 specialist, who do you report to?

8 A. As area environmental manager I
9 report to Scott Nadler, N-A-D-L-E-R, who
10 was assistant vice president
11 environmental quality.

12 Q. And what kind of an area or
13 territory does he cover?

14 A. The entire Conrail system.

15 Q. In your present position, what
16 are your basic functions or
17 responsibilities?

18 A. To oversee and manage
19 environmental concerns within my
20 territory.

21 Q. And could you give us an idea of
22 what some of those concerns on a
23 day-to-day basis might be?

24 MR. ERMILIO: Objection. What's
25 the relevance of concerns east of

1 H. Elliott

2 Harrisburg, Pennsylvania?

3 MR. RUVOLO: Well, I am sure --

4 well, I am trying to get the job

5 responsibility and the functions of Mr.

6 Nadler, as well, if --

7 MR. ERMILIO: Well, Mr.

8 Elliott's explained that his current

9 position is not responsible for the

10 Elkhart yard. He's responsible for

11 matters east of Harrisburg, PA.

12 MR. RUVOLO: That's true.

13 MR. ERMILIO: He's explained

14 that Mr. Nadler is responsible for the

15 entire system. But your question was to

16 what type of --

17 MR. RUVOLO: Generally what the

18 functions --

19 MR. ERMILIO: Generally what

20 types of matters does he deal with in his

21 position, not Mr. Nadler deals with?

22 MR. RUVOLO: I am just trying to

23 get an idea of what his general functions

24 and responsibilities are on a day-to-day

25 basis.

1 H. Elliott

2 MR. ERMILIO: In his current
3 position?

4 MR. RUVOLO: In his current
5 position.

6 MR. ERMILIO: I object. That is
7 outside the scope. It's not relevant, not
8 likely to lead to admissible evidence in
9 this case. If you can explain to me your
10 basis, we will make a decision on whether
11 we are going to -- whether I am going to
12 --

13 MR. RUVOLO: It's okay. I will
14 just call Mr. Nadler, if I have to, to
15 find out what the functions are --

16 MR. ERMILIO: Are you looking
17 for the functions of Mr. Nadler or --

18 MR. RUVOLO: I am looking for
19 the functions of the environmental -- the
20 environmental manager, whoever that might
21 be.

22 MR. ERMILIO: The environmental
23 manager for Elkhart?

24 MR. RUVOLO: Of Conrail. Who
25 would have some idea of Elkhart.

1 H. Elliott

2 MR. ERMILIO: That's a different
3 question than the one you posed to which
4 I am objecting.

5 MR. RUVOLO: I realize that.

6 MR. ERMILIO: Okay.

7 MR. RUVOLO: I will call Mr.
8 Nadler if I have to.

9 MR. ERMILIO: As I said, I am
10 not instructing him not to answer. What I
11 am asking you to do is rephrase your
12 question in -- I am putting on the record
13 my objection to your current question.

14 MR. RUVOLO: I will rephrase it.

15 BY MR. RUVOLO:

16 Q. What are the functions and
17 responsibilities of an area environmental
18 manager, I believe you said it was?

19 A. Area environmental managers are
20 primarily responsible for assisting the
21 operating divisions and environmental
22 concerns that may come up regarding any
23 railroad-related environmental type
24 issue. We do project management of
25 outside vendors that Conrail will hire to

1 H. Elliott

2 do projects such as asbestos abatement.

3 We are responsible for emergency response
4 from the environmental side of it.

5 We also try to provide support
6 services to other Conrail departments in
7 the area of regulations, permitting,
8 those type of issues.

9 Q. Thank you. What, could you tell
10 us basically on Mr. McNally's general
11 functions, he's the chief guru?

12 A. Jim McNally is director of
13 hazardous materials and Jim's function is
14 to oversee customer service concerns
15 dealing with hazardous materials as well
16 as regulatory issues and questions, and
17 also deals with the hazardous materials,
18 transportation response side of it, as
19 well.

20 Q. During your tenure, have you had
21 any relationship with a gentleman by the
22 name of Jesse Dehl, D-E-H-L?

23 A. No.

24 Q. Have you as part of your
25 functions had any dealings with the AAR,

1 H. Elliott

2 the American Association of Railroads?

3 A. Yes, I have.

4 Q. And what would those dealings
5 consist of?

6 A. My dealings with the Association
7 of American Railroad revolved around
8 doing work with bureau of explosives
9 inspectors who are a part of the
10 Association of American Railroads. I have
11 also had dealings with the bureau of
12 explosives staff in Washington, D.C.

13 Q. Have you done any training of
14 people within the Conrail system as to
15 the -- as to hazardous materials,
16 handling or otherwise?

17 A. Yes.

18 Q. And what type of training would
19 you be -- would that be, did you give
20 seminars, courses, or is it a one-on-one
21 basis?

22 A. Is the question dealing just with
23 training to Conrail employees?

24 Q. Yes.

25 A. Classes that basically deal with

1 H. Elliott

2 identification recognition of hazardous
3 materials, Department of Transportation
4 placarding system, proper preparation of
5 hazardous materials, shipping papers that
6 would accompany a train crew on a train
7 that's carrying hazardous materials.

8 Basic safety precautions and procedures
9 taking hazardous materials incidents
10 involving a rail train crew.

11 Q. Where are those classes or
12 instructions given, on site or are people
13 brought in to a particular centralized
14 facility?

15 A. Both.

16 Q. Both. Have you given training to
17 people out at Elkhart?

18 A. Yes.

19 Q. I am not looking for names, what
20 type of personnel would that include?

21 A. If I can get a clarification,
22 training with regards to Conrail
23 employees?

24 Q. Yes.

25 A. No training with regards to --

1 H. Elliott

2 don't recall doing any specific training
3 of employees on hazardous materials at
4 Conrail at the Elkhart yard.

5 Q. At the Elkhart yard. Is part of
6 your function or past functions to be
7 aware of the regulations of, say, the
8 department of the transportation or the
9 Federal Railway Association in regard to
10 hazardous materials?

11 A. Could you restate the question?

12 Q. As part of your job functions
13 with Conrail, going for the period, I
14 guess '84 to date, is it part of your
15 function to be aware of or to be familiar
16 with Department of Transportation
17 regulations or FRA regulations as to the
18 transportation of hazardous materials?

19 A. Directly only during my time when
20 I was supervisor of hazardous materials.

21 Q. And during that time as
22 supervisor, were you a member of the AAR
23 in any way or any of their committees?

24 A. Personally, no, I was not a
25 member of any of the standing committees

1 H. Elliott

2 at the AAR.

3 Q. What training did you yourself
4 have in regard to the hazardous material
5 transportation?

6 A. I attended a course in Pueblo,
7 Colorado, conducted by the Association of
8 American Railroads, a week long course
9 dealing with rail-related hazardous
10 material incidents, and a number of other
11 shorter courses during my time as
12 supervisor of hazardous materials.

13 Q. As part of that training, did you
14 become familiar with the workings of tank
15 cars?

16 A. Yes.

17 Q. The problems with tank cars?

18 A. I became familiar with the
19 workings and construction of tank cars,
20 yes.

21 Q. And their uses, various products,
22 chemicals, otherwise?

23 A. Yes.

24 Q. And the safety devices that
25 supposedly belong on tank cars?

1 H. Elliott

2 A. Yes.

3 Q. Have they changed over the years
4 that you are at all familiar with?

5 A. My basic understanding of the
6 safety features on tank cars really goes
7 back to only my time beginning as
8 supervisor of hazardous materials, and
9 basically the safety relief devices on
10 tank cars have not changed in that period
11 of time up until the present.

12 Q. Did you or anyone in your staff
13 or office have anything to do with the --
14 with recommendations for the testing or
15 repairing or altering of tank cars?

16 A. I don't know.

17 Q. To your knowledge, you yourself
18 did not?

19 A. No.

20 Q. Did you come in contact as part
21 of your function with the manufacturers
22 or owners or lessees of tank cars?

23 A. Yes.

24 Q. And would that be generally
25 because a problem had arisen or would

1 H. Elliott

2 that be because of your seeking general
3 knowledge for the usage of tank cars?

4 A. Both, actually.

5 Q. Did you at any time come into
6 contact with the manufacturers or
7 producers of hazardous materials,
8 chemical companies, their
9 representatives, who would be shipping in
10 tank cars?

11 A. Yes.

12 Q. And would that be as a result of
13 a particular incident that may have
14 occurred or would that be a joint meeting
15 to get together to decide on how best to
16 secure the materials?

17 A. There were associations with the
18 manufacturers of hazardous materials due
19 to incidents and also meetings not
20 necessarily because -- to sit down and
21 talk about retrofits or changes to tank
22 cars.

23 Q. Did any of these meetings involve
24 incidents that had occurred at the
25 Elkhart facility?

1 H. Elliott

2 A. Yes.

3 Q. Can you recall some of those,
4 could you tell us when they were or what
5 was the nature of the incident?

6 A. One involving a product known as
7 anhydrous hydrogen fluoride, involving a
8 breach in the actual tank car shell. I
9 also recall a second incident involving a
10 corrosive car where I spoke to the
11 shipper of the product, the manufacturer
12 of the product, I don't recall if the
13 shipper was the actual owner of the tank
14 car.

15 Q. Give us an idea of when these
16 occurred?

17 A. The anhydrous hydrogen fluoride
18 incident happened while I was the
19 division safety supervisor. So, it would
20 have -- it was -- the weather was very
21 cold. So, it would have had to have been
22 in 1984 or '85. I don't recall the exact
23 date.

24 Q. Do you recall who the shipper
25 was?

1 H. Elliott

2 A. Allied Signal.

3 Q. And the other incident you
4 referred to, do you remember when that
5 was?

6 A. It would have been the early part
7 of 1990. I don't recall the exact year.

8 Q. Do you recall who the shipper was
9 in that incident?

10 A. No, I do not.

11 Q. I believe there was an incident
12 in early '85 involving hydrogen chloride
13 where the car had originated or had
14 stopped in Cicero, Illinois, and then it
15 left Cicero and was on its way to Elkhart
16 and when it arrived at Elkhart it was
17 venting; is that the instance you are
18 referring to?

19 A. You referred to it as hydrogen
20 chloride, but it was anhydrous hydrogen
21 fluoride, and yes that car originated on
22 the Burlington Northern in Cicero,
23 Illinois.

24 Q. Did you personally investigate
25 that?

1 H. Elliott

2 A. I did not investigate the
3 incident. I was -- I was not in Elkhart
4 when it occurred. I subsequently went to
5 Elkhart after the incident.

6 Q. How about Mr. McNally, did he go
7 to Elkhart and investigate?

8 A. Yes.

9 Q. As I recall, in the report that
10 we received from Conrail, by the way,
11 there was some transcripts of testimony
12 given to the investigators who I believe
13 were from DOT or the National Safety
14 Transportation Board, and some of that
15 testimony was that the conductor, I
16 believe, noticed the -- something leaking
17 prior to the train leaving Cicero; do
18 you recall that?

19 A. I recall that.

20 Q. And he reported it to the yard
21 master, and the yard master said to him,
22 "Go ahead, leave, it's okay, the train's
23 all right"?

24 A. I recall that the yard master
25 reported the incident to someone on the

1 H. Elliott

2 Burlington Northern and Cicero. I don't
3 recall who the direct reporting went to.

4 Q. Would an incident like that be an
5 unusual occurrence in your experience
6 with the railroad?

7 MR. ERMILIO: Objection. Go
8 ahead and answer that.

9 THE WITNESS: I would have to
10 ask you to define what you mean by is it
11 a usual occurrence, just --

12 BY MR. RUVOLO:

13 Q. Is it unusual for a car to be
14 leaving, say, one destination and be
15 going to another and be leaking or
16 venting which might or might not be
17 suspected or detected?

18 A. Yes, I would consider that a
19 usual occurrence.

20 Q. Are you familiar with any other
21 incidents similar to that that may have
22 occurred?

23 A. I don't recall of any.

24 Q. During your tenure at Elkhart
25 with the law enforcement section, '77 to

1 H. Elliott

2 '84, and you said, I believe, that also
3 involved protecting Conrail property,
4 were there any unusual occurrences in the
5 way of spillage of hazardous materials?

6 A. One that I recall did not occur
7 at Elkhart.

8 Q. Do you know where it occurred?

9 A. West of La Porte, Indiana.

10 Q. Were you also responsible for the
11 safety of personnel in using various
12 products in their functions while working
13 at Elkhart?

14 Did you have anything to do
15 with the mechanical department or the car
16 department?

17 A. In which capacity?

18 Q. From the period '77 to '84 when
19 you were with law enforcement.

20 A. Could you rephrase that?

21 Q. As part of your functions as a
22 law enforcement officer who also had to
23 protect the property of Conrail, do you
24 recall or did you have responsibility for
25 dealing with employees of Conrail, for

1 H. Elliott

2 example, in the car department or the
3 mechanical department in regards to the
4 type of product they may have used?

5 A. The type of product in tank cars,
6 or just the type of product they may use
7 in their day-to-day --

8 Q. The type of product that they may
9 use in the day-to-day thing, something
10 that might involve degreasers or solvents
11 or something of that nature?

12 A. No.

13 Q. No, that was not part of your
14 function at all?

15 A. No.

16 Q. How about in tank cars, was any
17 part of your function having to do the
18 supervision of repairs or -- that may
19 have been done to tank cars at Elkhart?

20 A. When I was a police officer?

21 Q. Yes.

22 A. No.

23 Q. There have been reports, whether
24 rumor or otherwise, that at some time
25 there were tank cars that were buried out

1 H. Elliott

2 at the Elkhart yard; are you familiar
3 with any of those reports or rumors or
4 statements?

5 A. No.

6 Q. Did you personally ever get
7 involved with any RSPA functions or
8 activities, that's the research and
9 special programs administration, in
10 regard to tank cars?

11 A. No.

12 Q. Would Mr. McNally as part of his
13 function be involved more directly with
14 AAR or RSPA, or ICC or DOT?

15 A. Yes.

16 Q. That would be his -- would he be
17 the representative of the railroad,
18 Conrail, for example, at meetings with
19 those organizations?

20 A. In most cases, yes.

21 Q. And would it be his function if
22 there was a problem in regard to the
23 shipment of certain types of chemicals,
24 would it be his duty to communicate with
25 the shipper or the manufacturer of the

1 H. Elliott

2 car or something of that nature, to make
3 any corrections that might be necessary?

4 A. Yes.

5 Q. You said you had some familiarity
6 with tank cars. There are various type of
7 tank cars, are there not?

8 A. Yes.

9 Q. Are there specific types that
10 deal with the shipment of chemicals?

11 A. Yes.

12 Q. And would they be, what, high
13 pressure tank cars, low pressure tank
14 cars?

15 A. There are two general categories
16 of tank cars used to transport hazardous
17 materials, general service tank cars and
18 pressure tank cars.

19 Q. And what basically is the
20 difference?

21 A. A general service tank car will
22 have what's referred to as an internal
23 tank pressure of less than 100 PSI, a
24 pressure tank car will have an internal
25 tank pressure rating of between 100 and

1 H. Elliott

2 600 PSI.

3 Q. And that would be -- the
4 difference would be due to the volatility
5 of the material being carried, or --

6 A. Not necessarily the volatility,
7 no.

8 Q. What would be the difference in
9 the pressures, the need for the different
10 pressures?

11 A. Whether or not the product is
12 loaded under pressure in a gaseous state
13 or whether it's a liquid or solid that
14 may be loaded, not under any pressure.

15 Q. Did you as the hazardous material
16 -- as a hazardous material officer --
17 have anything to do with the companies in
18 regard to the construction of tank cars,
19 or did you make any recommendations to
20 the manufacturers as to the construction
21 of tank cars?

22 A. No.

23 Q. Now, you mentioned before that
24 you did some training, had some courses
25 for Conrail personnel. Were any follow-up

1 H. Elliott

2 programs conducted?

3 A. Emergency response groups.

4 Q. Emergency response groups. Would
5 any part of your functions from '78
6 through to date involve damage claims
7 made by shippers or consignees?

8 MR. ERMILIO: Objection. The
9 question's going to the fact of are
10 claims being made for damage or process
11 by which such claims are made? We have
12 identified that in letters to you earlier
13 and have made it clear that we will
14 object to the question as beyond the
15 scope of permissible discovery.

16 MR. RUVOLO: Are you directing
17 him not to answer?

18 MR. ERMILIO: Answer. You may
19 answer that question.

20 THE WITNESS: Would you repeat
21 the question?

22 BY MR. RUVOLO:

23 Q. As part of your functions from
24 '84 to date in '92, do you get involved
25 or have you been involved with claims for

1 H. Elliott

2 damages sustained by manufacturers or
3 consignees of tank cars, lessees?

4 A. I have to ask you to elaborate on
5 what you mean by claims for damages.

6 Q. Okay. If a manufacturer or a
7 shipper using a tank car claims that his
8 car was damaged, would any part of your
9 function be to go out and make a report
10 and to check into the validity of the
11 claim for damage?

12 A. No, I never did anything like
13 that.

14 Q. At Elkhart or otherwise?

15 A. No.

16 Q. How about if it was a claim for
17 loss of lading, in other words, the
18 shipper says, "I shipped 20,000 gallons
19 when it left Cicero, when it got to
20 Cleveland, it only had 5,000 gallons"?

21 MR. ERMILIO: Objection. Same
22 objection on the basis of relevance,
23 beyond the scope of permissible
24 discovery.

25 Let me ask, Peter, are you

1 H. Elliott

2 planning on going into this claims area
3 for --

4 MR. RUVOLO: No, I just want to
5 see whether he made any reports or had
6 any connections with it.

7 MR. ERMILIO: You can answer
8 that question.

9 THE WITNESS: Generally those
10 type of issues were handled either with
11 Conrail's claim department or damage
12 prevention group.

13 BY MR. RUVOLO:

14 Q. Even if it involved a hazardous
15 material?

16 A. Generally, yes.

17 Q. So that incident that you
18 referred to before involving northern --
19 Burlington Northern and the venting and
20 the seepage, you would not make a report
21 involving a claim for loss of laiding,
22 though you might investigate and make a
23 report as to how the accident occurred;
24 is that correct?

25 A. In my function then as division

1 H. Elliott

2 safety supervisor, I did neither of
3 those.

4 Q. Okay. Do you know of anybody who
5 did, who would have at that time?

6 A. Pertaining to that particular
7 instance? I don't know.

8 Q. Or instances such as that. Is
9 there anybody that goes out when there
10 has been an incident involving a spillage
11 or a leakage or something of that nature
12 -- is there anybody that goes out and
13 checks as to the cost of damage to the
14 car for repair purposes?

15 MR. ERMILIO: I am going to make
16 the same objection for this entire area
17 of questioning, so I will not continue to
18 -- with your permission, I won't
19 continue to repeat the objection, but I
20 would like it to pertain to this area of
21 questioning, claims.

22 MR. RUVOLO: Continuing
23 objection.

24 THE WITNESS: We have a damage
25 prevention group that does that type of

1 H. Elliott

2 work, the way that you have explained it.

3 BY MR. RUVOLO:

4 Q. Who is in charge of that?

5 A. I don't recall the name of the
6 person who currently heads up our damage
7 prevention group.

8 Q. Is there a damage prevention
9 group for various regions, or is it
10 handled out of one central office?

11 A. They are established that they
12 have groups, an office that will handle a
13 particular region or territory on
14 Conrail.

15 Q. So, if it was Elkhart yard, where
16 would it be handled, Chicago or Dearborn?

17 A. I don't know.

18 Q. You don't know?

19 Same true for loss of lading
20 claims, is there a group that would
21 handle that?

22 Would that fall under damage
23 prevention?

24 A. Loss of lading investigations,
25 yes.

1 H. Elliott

2 Q. Yes. Okay. Did you have anything
3 to do with personnel involved in tank car
4 repairing, for example, or even just
5 railroad car repairing; was that part of
6 your function as a safety officer or as a
7 haz/mat specialist?

8 A. Not the general repair of tank
9 cars, no.

10 Q. Were there qualifications
11 standards issued by either the FRA or the
12 DOT or even the AAR as to, say, welders
13 in making repairs to tank cars, that you
14 know of?

15 A. I don't know.

16 Q. Was any -- say, for the welders
17 at Elkhart, to your knowledge, were any
18 of them tested or given certificates of
19 qualification; did they have to meet any
20 standards?

21 A. I don't know.

22 Q. We have heard a report -- not a
23 report -- we have heard testimony that
24 some of the car inspectors were given a
25 manual or a booklet which they thought

1 H. Elliott

2 came from the AAR but was for the steps
3 to be taken in inspecting cars. Did your
4 office have anything to do with that?

5 A. Which office?

6 Q. The safety supervisor, the
7 hazardous material guru or regional
8 supervisor?

9 A. I don't recall that in any of the
10 positions I held where the job that I did
11 or the department I worked for was
12 directly responsible for issuing those
13 types of books to mechanical department
14 personnel other than safety department or
15 safety manuals that were basically aimed
16 at general safety practices.

17 Q. Did Conrail own its own -- during
18 your tenure -- does Conrail own its own
19 tank cars?

20 A. Yes.

21 Q. Does your office or does someone
22 that you know of have -- make evaluations
23 of these cars or have anything to do with
24 the testing of these cars?

25 A. It would be our mechanical

1 H. Elliott

2 department.

3 Q. Okay. And would that be out of a
4 region or out of Philadelphia?

5 A. I don't know which.

6 Q. Same thing as far as dealing with
7 subcontractors, who in your organization
8 would enter contracts or agreements with
9 subcontractors for the repair of tank
10 cars owned by Conrail?

11 A. I don't know who did.

12 Q. Would it be Mr. McNally or his
13 office?

14 A. No, we never did anything like
15 that.

16 Q. Whose responsibility would it be
17 to maintain these tank cars that are
18 owned by Conrail?

19 A. Mechanical department.

20 Q. Per region, or out of
21 Philadelphia?

22 A. It would depend where the car was
23 located at.

24 Q. Do you know anybody in the
25 mechanical department out at either

1 H. Elliott

2 Elkhart or the division in charge of
3 Elkhart that would have such a
4 responsibility?

5 A. Not currently, I don't know
6 anyone out there who would have that
7 responsibility.

8 Q. How about from '84 to '88, for
9 example?

10 A. If I could ask, just repeat the
11 question.

12 Q. Do you know anybody in the
13 mechanical department from '84, while you
14 were out in Chicago in '84 or '85, or
15 Philadelphia in '85- '88, who would have
16 the responsibility of repairing,
17 cleaning, owning, Conrail's tank cars?

18 A. Can I ask to stop so I can ask
19 you a point of clarification?

20 MR. ERMILIO: You just want to
21 take a break for a moment?

22 MR. RUVOLO: Sure.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 (Whereupon, the previous

1 H. Elliott

2 question was read by the court reporter.)

3 THE WITNESS: I have to explain
4 before I can directly answer that, that
5 Conrail owns very few tank cars. What
6 tank cars we do own are basically used to
7 store fuel oils that are used to then
8 fuel snow blowing equipment, snow
9 fighting equipment, other types of
10 equipment. We do not own any tank cars
11 that are used to transport products such
12 as anhydrous hydrogen fluoride. And
13 again, the number that we own -- although
14 I don't know the exact number -- is very
15 small and it's just for the use of,
16 again, company-type material.

17 If one of those cars was to be
18 moved from one yard to another, then
19 prior to that car being moved our
20 mechanical department would inspect that
21 car, as they would any rail car, to make
22 sure that the rail trucks were in
23 operating order, that the coupler system
24 was operating, that the air brake system
25 was operating, that all the safety

1 H. Elliott

2 appliances, the ladders, the crosswalks,
3 were all within FRA requirements. That
4 would be done depending on whatever yard
5 the car was.

6 BY MR. RUVOLO:

7 Q. I see. So that, in effect,
8 Conrail does not lease its tank cars to
9 any shippers or manufacturers of other
10 products, basically kept within its own
11 system?

12 A. Yes.

13 Q. Does it do any repair work in
14 regard to non-Conrail tank cars?

15 A. Yes.

16 Q. And would that be -- involve a
17 major repair, if necessary to get the
18 tank car back in operation?

19 A. I have to ask you to explain and
20 differentiate between major repair to the
21 rolling stock of the car or other parts
22 of the car. I am not sure I know what you
23 mean by major repair.

24 Q. Well, if there was damage to the
25 tank itself such as a hole being

1 H. Elliott

2 punctured or a leak in the paneling or
3 the insulation, would Conrail do that
4 type of repair of customers' tank cars?

5 A. Conrail would not -- and again in
6 the time that I am familiar with, this
7 type of activity, which is basically from
8 my time as supervisor of hazardous
9 materials -- Conrail would not do any
10 repairs of the actual shell of a tank car
11 that would then, in turn, allow it to
12 transport hazardous materials, if there
13 had been some type of hole, for example,
14 in the tank car shell. There were
15 instances where a tank car may have been
16 involved in a derailment and the
17 mechanical department's job was basically
18 to even put that tank car up on a flat
19 car so it could be transported to a
20 location that was determined by the owner
21 of the tank car.

22 Q. If you are aware of a tank car
23 that is going to be shipped containing a
24 hazardous material, what is your
25 function, per se?

1 H. Elliott

2 What do you actually do, if
3 anything?

4 A. Again, I would have to ask in
5 what capacity.

6 Q. Well, you work in Philadelphia.
7 So, okay, a tank car is going from
8 Philadelphia to Chicago via Elkhart. It's
9 going to contain hazardous material. What
10 if anything is your job function in
11 regards to that car; do you notify
12 anybody, do you make any reports, do you
13 call ahead, do you check with the
14 shipper, the manufacturer, or anything of
15 that nature?

16 A. None of those, no.

17 Q. But if there was an incident that
18 arose or an accident, then, your function
19 would come into play; would that be
20 correct?

21 A. Yes.

22 Q. Okay. And would your function at
23 that time be concerned with the contents
24 of the tank car, IE, hazardous material,
25 or would it be concerned with the damage

1 H. Elliott

2 to the tank car itself?

3 A. Both.

4 Q. And when you say damage, would
5 that involve getting it back on track and
6 off to be repaired, or are you thinking
7 of other things that I am not aware of?

8 A. Other things that you have not
9 mentioned.

10 Q. Like what?

11 A. My concern, if we had received
12 information of a tank car that had been
13 damaged, would be to try with whatever
14 means were available to assess the extent
15 of the damage to the tank car, and then
16 in conjunction with the appropriate
17 regulatory groups, whether or not it
18 would be the FRA or the shipper of the
19 car, make decisions to whether or not we
20 could move the car a short distance to
21 transfer the product, whether or not we
22 would have to transfer the product
23 without moving the car first, if the
24 damage was such that we didn't feel that
25 that was safe, or whether or not the car

1 H. Elliott

2 could be moved from the location that it
3 was presently at to the consignee or back
4 to the shipper for further repairs.

5 Q. At what stage would you be called
6 in, if the incident occurred happened
7 during the humping process out at
8 Elkhart?

9 A. We would normally receive
10 notification of an incident after it had
11 occurred.

12 Q. And who else would be notified
13 within Conrail?

14 A. Depending on the magnitude of the
15 incident, appropriate transportation,
16 mechanical, maintenance employees and
17 supervisors on the division of which the
18 incident happened and appropriate
19 transportation, mechanical, maintenance,
20 people at the corporate office in
21 Philadelphia.

22 Q. Have you ever been -- I shouldn't
23 say ever -- have you been active at all
24 in the AAR, in a sense of are you a
25 member, are you a committee member?

1 H. Elliott

2 A. Conrail is a member of the
3 Association of American Railroads. I have
4 been involved with the AAR again in my
5 dealings with various inspectors, with
6 the bureau of explosives. My involvement
7 in the bureau of explosives annual
8 hazardous materials seminar through
9 involvement in a multi-industry group
10 called Trans CAER, which is the acronym
11 for Transportation Community Awareness
12 and Emergency Response, that group has an
13 AAR member that sits on that task group.
14 So, in different ways, yes, I have had
15 associations with --

16 Q. I think I asked before, and I
17 think you said you were not a member of
18 the tank committee, tank car committee of
19 the AAR.

20 A. No, I am not.

21 Q. Would Mr. McNally have been a
22 member, to your knowledge?

23 A. At one point he may have been. I
24 don't know if he is a current
25 representative to the tank car committee

1 H. Elliott

2 at this point. I don't believe he is.

3 Q. Have you ever had any dealings
4 with a corporation known as Ethyl
5 Corporation?

6 A. I know several people who work
7 for Ethyl Corporation.

8 Q. Does Ethyl Corporation, to your
9 knowledge, have a relationship with
10 Conrail?

11 A. Ethyl Corporation ships products
12 via Conrail.

13 Q. Would the same be true of Vulcan
14 Materials?

15 A. I don't recall if Vulcan is a
16 shipper on Conrail or not. I am familiar
17 with the name.

18 Q. PPG?

19 MR. ERMILIO: I am sorry?

20 MR. RUVOLO: PPG.

21 THE WITNESS: The same question,
22 am I familiar with --

23 BY MR. RUVOLO:

24 Q. Do you know whether they ship
25 products via the Conrail system?

1 H. Elliott.

2 A. Yes, I believe they do.

3 Q. Dow Chemical, of course?

4 A. Yes.

5 Q. Hooker Chemical?

6 A. Hooker is no longer in operation.

7 Hooker was bought out by someone. There
8 are still tank cars that have the Hooker
9 markings on them, yes.

10 Q. Are you familiar with the
11 markings themselves?

12 A. Yes.

13 Q. I want to test your knowledge of
14 chemistry, but is there a distinction
15 made between the shipment of, say,
16 alcohol and something which reads
17 flammable, NOS?

18 A. Well, I to have you restate the
19 question.

20 Q. We have heard testimony that some
21 cars are marked merely with the words
22 flammable NOS. Are you familiar with that
23 designation, as to what that product
24 might be?

25 A. There are a number of products

1 H. Elliott

2 required by the Department of
3 Transportation that are required to have
4 the product name stenciled on the
5 right-hand side of the tank car. I don't
6 recall that flammable NOS -- and it would
7 be appropriately flammable liquid NOS,
8 which means not otherwise specified, that
9 that is one of the products required to
10 be stenciled on a tank car. Flammable
11 liquid NOS is, according to the
12 Department of Transportation, a proper
13 shipping name, and that could show on a
14 shipping paper as a product name.

15 Q. But you would not know from that
16 designation what the specific product
17 was, would you, necessarily?

18 A. You would since the early 1990's
19 in a law that was enacted by the
20 Department of Transportation that now
21 requires that any -- I should say that
22 most products that have an NOS denotation
23 afterwards, that the chemical or
24 technical name of that product be shown
25 in parentheses right after the NOS --

1 H. Elliott

2 Q. On the tank car itself, or on the

3 bill of lading?

4 A. On the bill of lading.

5 Q. So that the -- if there was an

6 incident, somebody could pull the bill of

7 lading and know what the product was;

8 right?

9 A. Would show the DOT proper

10 shipping name, then again the chemical or

11 technical name of that constituent

12 afterwards, yes.

13 Q. Do you know by any chance that

14 the shipping name of carbon

15 tetrachloride, what the marking would be

16 on a car carrying such?

17 A. I don't recall currently what the

18 hazard class is for carbon tetrachloride.

19 So, I cannot accurately tell you what

20 kind of placard would be on the car. And

21 I don't recall if carbon tetrachloride is

22 one of those products that requires to

23 have the product name stenciled on the

24 tank car.

25 Q. Who would know that?

1 H. Elliott

2 A. Someone who -- anyone who had a

3 copy of the DOT regulations.

4 Q. So, it's specified in the DOT

5 records --

6 A. Yes.

7 Q. Same is true for

8 tetrachloroethylene?

9 A. Yes.

10 Q. Did your office have any

11 connection or direct relationship with a

12 chemist or a chemistry department in

13 Conrail?

14 A. Which -- and again, in which one

15 of my roles?

16 Q. With the hazardous materials.

17 Let's stick with that. The hazardous

18 materials set-up. I mean, would they come

19 to you or would you ever go to a chemist

20 or chemistry department within Conrail

21 for definition or clarification?

22 A. Definition or clarifications with

23 regards to --

24 Q. The use of a product or the

25 shipment of a product or the type of

1 H. Elliott

2 product being shipped within the tank
3 car.

4 A. I'm afraid I still don't
5 understand.

6 Q. Let's start. Let's go back and
7 just start.

8 Do you in your positions or
9 your duties from 1984 through today ever
10 run into contact or ever have contact
11 with a chemist or a chemistry department
12 located within Conrail?

13 A. To the best of my knowledge, we
14 don't have a chemistry department. We
15 have an oil, analytical lab at one of our
16 facilities, I think it's Altoona, and the
17 only person in Conrail that I have had
18 any dealings with related to the question
19 who I believe is a chemist is a gentleman
20 by the name of Frank Saboda, with our
21 environmental group.

22 Q. Is that S-A-B-O-D-A?

23 A. Yes.

24 Q. If a certain material or chemical
25 is classified by EPA or DOT or any

1 H. Elliott

2 federal regulatory agency or
3 reclassified, put it this way, from
4 non-hazardous to hazardous, would the
5 notification of that change come to your
6 department, your chemist, or some other
7 department within Conrail?

8 A. The change would have been
9 communicated to the hazardous materials
10 group through updates to the hazardous
11 material regulations published by the
12 Department of Transportation.

13 Q. Are those changes in regulations
14 sent around throughout the company
15 internally as to what the new changes are
16 or is there a monthly bulletin or
17 something of that nature?

18 A. No.

19 Q. And whose responsibility is it to
20 keep up in that, whose jurisdiction does
21 that fall under?

22 A. To keep up with?

23 Q. The changes, the new regulations,
24 that come in.

25 A. It was a function of the

1 H. Elliott

2 hazardous materials section.

3 Q. And who is in charge of that?

4 A. Jim McNally.

5 Q. I have no further questions.

6 MR. ERMILIO: Do you have any
7 questions?

8 MR. McDONNELL: Once again at
9 this time, Penn Central would just
10 reserve its right to call the deponent
11 and ask further questions.

12 MR. ERMILIO: I stated this
13 earlier, but I think you were not
14 present, just wanted to make it clear
15 that Penn Central didn't notice this
16 deposition and Conrail reserves it's
17 rights summarily at the time -- if Penn
18 Central does call or requests this
19 deposition, notices this deposition at a
20 later date, Conrail reserves its rights
21 to object at that time.

22 I have no questions.

23 (Whereupon, the deposition was
24 concluded at 12:20 p.m.)

25

I N D E X

- - -

WITNESS

PAGE

HOWARD R. ELLIOTT

BY MR. RUVOLO:-----3

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C E R T I F I C A T E

I, the undersigned, HOWARD R. ELLIOTT,
have read the foregoing, and it is a
true and correct transcript of the proceedings
with the following exceptions, as noted below:

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SIGNATURE

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